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case.

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**IN THE
COURT OF APPEALS OF INDIANA**

CHARLES R. WEAVER,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 80A02-0603-CR-260

APPEAL FROM THE TIPTON CIRCUIT COURT
The Honorable Wayne A. Sturtevant, Special Judge
Cause No. 80C01-0210-FD-207

October 18, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Charles R. Weaver appeals the revocation of his probation. He presents the following restated issue for review: Was the evidence sufficient to establish that Weaver violated his probation?

We affirm.

Pursuant to a plea agreement, on July 8, 2003, Weaver pleaded guilty to battery of his minor son, as a class D felony. The trial court sentenced Weaver to a suspended term of three years in prison and placed him on supervised probation. His probation in Tipton County was scheduled to end on May 27, 2006.

On January 24, 2005, Weaver was arrested in Howard County for pointing a firearm, criminal recklessness with a deadly weapon, and battery, all as class D felonies.¹ Weaver did not report his arrest to his probation officer. After discovering the arrest, the State filed a notice of probation violation on January 31, 2005.² Thereafter, on August 8, 2005, the trial court held a preliminary hearing on the alleged probation violation. Based upon admissions by Weaver, the trial court found that Weaver had violated probation. At the conclusion of the subsequent dispositional hearing, held on January 9, 2006, the trial court revoked Weaver's probation and ordered that he serve the previously suspended sentence at the Department of Correction. Weaver now appeals.

¹ The alleged victim in that case was once again his minor son.

² The State alleged Weaver violated the following condition of probation: "8. You must obey all the laws of the City, State, and Federal Governments. An arrest could cause your probation to be revoked. If you are arrested, you must notify your probation officer within 48 hours." *Appellant's Appendix* at 5.

Weaver asserts there was no evidence submitted at the preliminary hearing from which the trial court could have found by a preponderance of the evidence that he violated a criminal law. While the trial court found that Weaver admitted the alleged probation violation, Weaver claims he admitted only that he had been arrested and charged with new crimes in Howard County.

Weaver correctly observes that an arrest alone does not warrant the revocation of probation. *See Martin v. State*, 813 N.E.2d 388 (Ind. Ct. App. 2004); *Johnson v. State*, 692 N.E.2d 485 (Ind. Ct. App. 1998). “The same holds true for the fact that charges were filed against a probationer.” *Martin v. State*, 813 N.E.2d at 391. Thus, the State “cannot rely upon [a probationer’s] admission that he was arrested and that charges had been filed against him to prove by a preponderance of the evidence that [the probationer] violated his probation by committing another criminal offense.” *Id.*

Contrary to his assertions on appeal, Weaver did not simply admit that he had been arrested and charged in Howard County. Rather, he also admitted that he had violated the law. The following colloquy at the preliminary hearing reveals that the trial court specifically sought to make this distinction:

[DEFENSE COUNSEL]: Judge, I think the defendant is prepared to admit the violation that he was arrested....

THE COURT: Mr. Weaver, is that correct? Do you want to admit the allegation here today?

DEFENDANT: Yes, sir.

THE COURT: All right. Let me make you aware that the condition itself requires that you obey all the laws of city, state, and local government. Now obviously an arrest would be an indication that you had violated state law in this regard in this regard (sic) and the level of proof in this type of proceeding is lower than it would be at trial. At your trial in Howard County, assuming there’s a trial, the finding would have to be

beyond a reasonable doubt. In this case here on probation violation, proof has to be by a preponderance of the evidence which means that if you start with balanced scales, mere tipping of the scale from one side to the other is sufficient. So it is possible that a finding that you were arrested, that there was probable cause for that arrest would be enough. Do you understand that?

DEFENDANT: Yes, sir.

THE COURT: But again, the allegation is that you failed to obey the law, not that you were arrested for a violation of the law. Do you understand that difference?

DEFENDANT: Yes, sir.

THE COURT: Are you sure?

DEFENDANT: Yes, sir.

THE COURT: Okay. And you still wish to go forward with the admission?

DEFENDANT: Yes, sir.

* * * *

THE COURT: All right. Then to the allegation that you violated probation condition number 8 do you admit or deny that violation?

DEFENDANT: I admit.

THE COURT: All right, based upon that admission then I'll find that you have violated your probation....

Transcript at 15-18.

Here, unlike the probationer in *Martin v. State*,³ Weaver was accurately informed by the trial court as to what constituted a violation of his probation. After being so informed, Weaver proceeded to admit that he violated probation by failing to obey the law. Under these circumstances, the trial court properly found that Weaver violated his

³ In *Martin*, the trial court began by informing Martin that the alleged probation violation was that "he had had charges filed against him." *Martin v. State*, 813 N.E.2d at 390. Thereafter, Martin asked the trial court, "And my probation – they say that my probation violation is just getting arrested." *Id.* The court responded affirmatively and then asked Martin if he would like to speak with an attorney. Martin responded, "No, I'm not worried about it. I mean, if it's just a violation just getting arrested obviously I violated cause I'm in jail." *Id.* Upon further questioning by the trial court, Martin proceeded to admit that charges had been filed against him and he had been arrested. When the court asked if he was waiving his right to an attorney, Martin asked a second time, "I mean my – my probation violation is just being arrested and that's it." *Id.* The court responded in part, "Yes, that's the single allegation – well it's not being arrested, it's having charges filed against you." *Id.*

probation without requiring the State to present additional evidence supporting the allegations out of Howard County. *See Sanders v. State*, 825 N.E.2d 952 (Ind. Ct. App. 2005) (observing that when a probationer admits to the violations, procedural due process safeguards and an evidentiary hearing are not necessary; instead, the court can proceed to determine whether the violation warrants revocation), *trans. denied*.⁴

Judgment affirmed.

BARNES, J., and MATHIAS, J., concur.

⁴ We note that probation revocation is a two-step process. First, the court must make a factual determination that a violation of a condition of probation actually has occurred. If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation. *Id.* Weaver's appeal involves only the first step of this process. In other words, Weaver does not claim that the violation, if upheld, does not warrant revocation of his probation.